

IN THE DRAWINGS:

The attached sheet of drawing includes changes to FIG. 7. This sheet, which includes FIGS. 6 and 7, replace the previous drawing sheets, including FIGS. 6 and 7. In FIG. 7, previously omitted element 912 has been added. (See attached Replacement Sheet)

REMARKS

Claims 1 through 11 are currently pending in the application.

This amendment is in response to the Office Action of September 5, 2003.

Included in this amendment is a request for approval of a drawing correction to drawing Fig. 7 and a sheet of corrected formal drawing for Fig. 7 illustrating the heat sink 912 therein.

35 U.S.C. § 101 Double Patenting Rejection

Claims 1 through 4 and 6 through 11 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 2 and 6 of prior U.S. Patent 6,337,227 (hereinafter referred to as the `227 patent). Applicant respectfully traverses this rejection, as hereinafter set forth.

Applicant asserts that a reliable test for statutory double patenting under 35 U.S.C. § 101 is whether a claim in the application can be literally infringed without literally infringing a corresponding claim in the patent. Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting under 35 U.S.C. § 101 does not exist. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Applicant asserts that no statutory double patenting under 35 U.S.C. § 101 exists between the embodiment of the invention set forth in presently amended independent claim 1 of the present application and the embodiments of the inventions set forth in independent claim 1 and dependent claims 2 and 6 therefrom of the `227 patent because different embodiments of inventions are set forth in such claims. For instance, the embodiment of the invention set forth in presently amended independent claim 1 of the present application clearly sets forth an element of the invention calling for “providing a heat sink element for said multi-level stack of semiconductor substrate elements” whereas the embodiments of the inventions set forth in independent claim 1 and dependent claims 2 and 6 of the `227 patent do not. Accordingly, no statutory double patenting under 35 U.S.C. § 101 exists between the embodiment of the invention of presently amended independent claim 1 of the present application and the embodiments of the inventions of independent claim 1 and dependent claims 2 and 6 therefrom

of the `227 patent. Therefore, claims 1 through 4 and 6 through 11 are allowable.

Applicant requests the allowance of claims 1 through 11 and the case passed for issue.

Respectfully submitted,



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Attachments: Replacement Sheet (FIGS. 6 and 7)

Document in ProLaw



ANNOTATED SHEET SHOWING

CHANGES

Inventor: Michael B. Ball

Serial No.: 09/943,880

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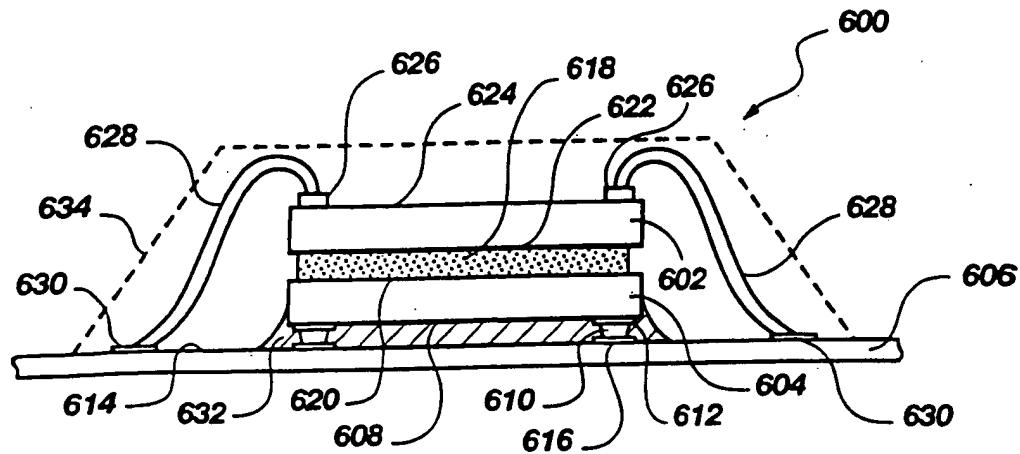


Fig. 6

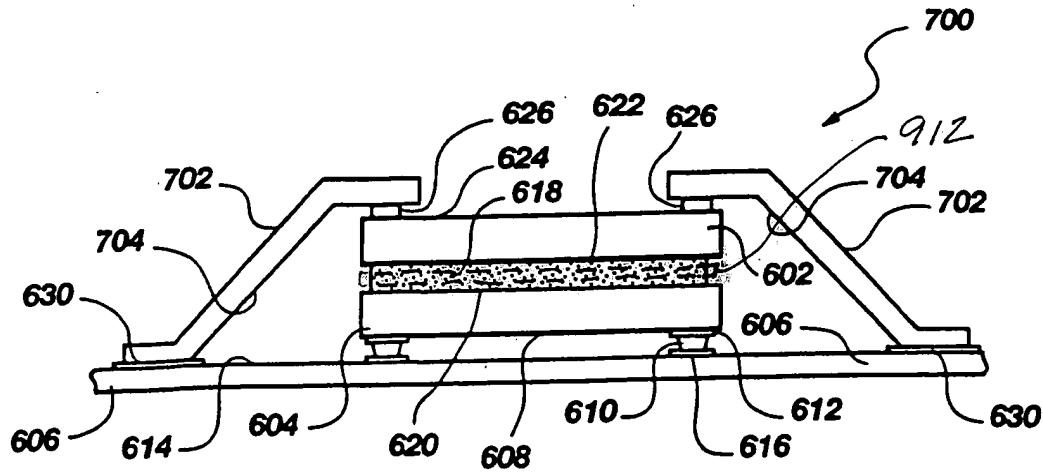


Fig. 7